

MINUTES OF COMMISSION MEETING
May 27, 1999

Present at the meeting of the New Jersey Law Revision Commission held at 15 Washington Street, Newark, New Jersey were Commissioners Albert Burstein, Hugo Pfaltz, Jr., and Peter Buchsbaum. Professors Robert Carter and William Garland attended on behalf of Commissioners Acting Dean Eric Neisser and Dean Ronald J. Riccio, respectively.

Minutes

The Commission accepted the Minutes of the April 22, 1999 meeting as submitted.

Legislative Report

John Cannel reported on the status of Commission projects in the Legislature. Two bills, one dealing with compilation of the criminal code and the other with surrogates, were signed by the Governor. Bills on lost property and service of process were ready for listing in the Assembly for enactment. A bill on the penalty enforcement act is in the Senate awaiting action. All three should be enacted this year. The standard form contract act and the electronic records act are being put into bill form. The Commission requested that Mr. Cannel work on having bills on Commission projects pre-filed for the next Legislative session.

Juries

The Governor has signed into law the criminal code and surrogate projects.

The Commission asked Mr. Cannel to learn the status of the Standard Form Contract Act.

Common Interest Ownership

The Commission decided to carry over consideration of this project to the July 1999 meeting due to Professor Garland's absence. Chairman Burstein noted that there is a bill in the Assembly dealing with this subject matter.

UCC Revised Article 9 - Secured Transactions

John Burke explained to the Commission that the Tentative Report recommended adopted of UCC Revised Article 9 with two non-uniform

amendments. Five states have already adopted the revision, and it is likely that the remaining states will also adopt it. The revision does not depart substantially from existing UCC Article 9. It makes numerous technical changes, expands the scope of Article 9 assets, clarifies perfection rules and moves toward, but falls short of, establishing a central filing system.

The two recommended non-uniform amendments are: (1) establishment of a central filing system and (2) adoption of the rebuttable presumption rule for consumer deficiency actions. Central filing once and for all rationalizes and simplifies the method of achieving perfection through filing of financing statements. The two arguments against it: (1) the county's loss of revenue and (2) the bar's interest in land record searches, do not justify preserving a dual filing system. Because the uniform text allows secured parties to perfect over fixtures by filing with the Division of Commercial recording, the county is likely to lose revenue and the bar must perform Trenton searches for real property closings under either version.

The uniform text establishes a separate system for "fixture filings," i.e., financing statements covering fixtures. These are filed in the land records of the place where the real property is located. If the identical financing statement is filed centrally, as the revision permits, it suddenly, by virtue of its location in Trenton, is not a "fixture filing." The uniform version gives secured parties with fixture filings certain rights against conflicting interests in fixtures based on land interests.

However, this hybrid treatment of fixtures is not justified under the revision. Removing the separate system of fixture filing does not upset the basic principles of priorities among secured parties, simplifies perfection of security interests and removes certain anomalies caused by the uniform text.

The second non-uniform amendment concerns the rebuttable presumption rule. That rule arises when a debtor defaults on the security contract and the secured party elects to pursue a deficiency judgment. Assuming the secured party violates the Code, with regard to notice, repossession, commercially reasonable disposition and the like, the rebuttable presumption rule says that the value of collateral is presumed to be equal to the deficiency. The revision applies this rule to commercial transactions, not to consumer transactions.

The reason for not addressing consumer transactions was disagreement among the states. There are competing rules such as the absolute bar rule which would prevent any deficiency judgment by a creditor in these cases. New Jersey has always used the rebuttable presumption rule for consumer transactions. The rule is reasonable. Incorporation in the revision is consistent with New Jersey policy.

The Commission approved the Tentative Report for release.

Proprietors

Maureen Garde incorporated Larry Fineberg's suggestions in a proposed final report. She accommodated many of Richard P. McCormick's suggestions as well; rejecting, however, the suggestion that the legislation specify the correct dividing line between East and West Jersey.

The Commission voted to release the Final Report.

Uniform Anatomical Gift Act

Judy Ungar made changes as directed. She researched the origin of the phrase "contrary to decedent's religious beliefs" but found no relevant legislative history. The best estimation is that the language reflected a concern for Orthodox Judaism. However, Ms. Ungar learned that while there is no single organization that speaks for Orthodox Jews, some Orthodox Jews support organ donation. The phrase presently serves to create problems about what distinguishes a religious belief from a belief based on a value system not considered a religion. Ms. Ungar reinserted the language "actual notice of contrary indication" as directed by the Commission.

The representatives of Sharing Network and Gift of Life Donor Program stated that they supported the report in its current condition and offered to help find sponsorship when the report is ready for submission to the Legislature.

The Commission approved release of the Tentative Report.

Probate Code

Mr. Cannel made requested changes that apply to intestate cases only. In the case of a missing heir, the report requires the estate to take reasonable steps

to locate the missing heir. If the heir is not found within the time period specified in the report, then the property passes to surviving heirs and is not paid to the Unclaimed Property Administrator.

The problem arises in matters of absent fathers and overseas relatives. For example, assume an elderly man, originally from Hungary, dies leaving a sister and brother. His sister lives in the United States and is located. His brother, who remained behind in Hungary, cannot be found. Once reasonable steps are taken to locate the brother or offspring and a certain period of time elapses, the brother's share of the estate goes to the sister, instead of going to the State of New Jersey which theoretically holds the property forever on behalf of the brother and his descendants.

The Commission approved the report for release.

New Projects

Staff proposed new projects for Commission consideration: (1) revision of the law on games of chance and amusement, (2) codification of criminal procedure into Title 2C, and (3) removal of obsolete statutes in Title 2A. The Commission asked staff to prepare a written report for the next meeting listing the additional proposed new projects.

Miscellaneous

Judy Ungar reported on the meeting with the Cemetery Association representatives. The Association is producing its own proposed statute. Differences include definitions and a provision that would allow the unrestricted sale of former cemetery land.

The next meeting is July 22, 1999.